

Massachusetts Department of Correction

DNA Sample Collection

103 DOC 487

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MASSACHUSETTS DEPARTMENT OF CORRECTION	DIVISION: COMMISSIONER
TITLE: DNA SAMPLE COLLECTION	NUMBER: 103 DOC 487

PURPOSE: The purpose of this policy is to establish Department of Correction policy for the collection of DNA samples from inmates pursuant to M.G.L. c. 22E, and as otherwise required by court orders and Massachusetts law.

REFERENCES: M.G.L., c. 124, § 1 (j), (o) and (q), M.G.L. c. 22E, St. 1997, c. 106, § 8, as amended by St. 2003, c. 107.

APPLICABILITY: Staff/Inmates.

PUBLIC ACCESS: Yes.

LOCATION: DOC Central Policy File/Institutional Policy File, Inmate Library.

RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:

Commissioner, Superintendents

PROMULGATION DATE: 05/18/2004 **EFFECTIVE DATE:** 6/17/2004

CANCELLATION: This policy cancels all previous departmental or institutional policies, policy statements, bulletins, and rules and procedures regarding DNA sample collection that are inconsistent with this policy.

SEVERABILITY CLAUSE:

If any part of this policy is, for any reason held to be in excess of the authority of the Commissioner, such decision will not affect any other part of this policy.

487.01 Definitions

Adjudication as a Youthful Offender - A juvenile adjudication on an indictment pursuant to G.L. c. 119, § 58.

Central DNA Coordinator - The employee designated by the Commissioner to coordinate DNA collection activities within the Department of Correction.

Conviction - For the purpose of this policy, the term "conviction" is defined as an adjudication of guilt by a Massachusetts court. The inmate need not be sentenced, so long as guilt has been determined.

The term "conviction" shall include:

- A current conviction;
- A former conviction;
- An adjudication as a "sexually dangerous person" pursuant to M.G.L. c. 123A;
- Any disposition referenced in Attachment I to this policy that is identified as a conviction.

The term "conviction" shall not include:

- A conviction in any court other than a Massachusetts state court;
- Any disposition referenced in Attachment I to this policy that is not identified as a conviction;
- Civil commitments, including but not limited to, civil commitments to the Massachusetts Alcohol and Substance Abuse Center ("MASAC") or MCI-Framingham pursuant to M.G.L. c. 123, § 35.

DNA Coordinator - A Department of Correction employee trained by the State Police to participate as a member of a DNA collection team and trained by the Department of Correction to enter DNA information into IMS.

DNA Liaison - A Department of Correction employee of a facility's Criminal Records Processing Unit who is appointed by the superintendent to act as the DNA liaison to the Office of the Commissioner.

Emergency Draw - A DNA sample collection, other than sample collection at the time of admission,

classification, transfer or release, as may be authorized by the Commissioner.

Incarceration - For the purpose of this policy, the term "incarceration" is defined as the commitment of an individual to a correctional facility by order of a court.

The term incarceration shall not include:

- Pretrial detention, including pretrial detention pursuant to M.G.L. c. 276, § 52A;
- Placement at the Treatment Center pending a probable cause determination, unless the inmate is also serving an outstanding criminal sentence;
- Civil commitment to Bridgewater State Hospital, unless the inmate is serving an outstanding criminal sentence at the time of admission;
- Civil commitment to MASAC or MCI-Framingham pursuant to M.G.L. c. 123, § 35.

Youthful Offender - Pursuant to M.G.L. c. 119, § 52, a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and seventeen, an offense against a law of the Commonwealth which, if he or she were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of M.G.L. c. 269, § 10 (a), (c) or (d), or M.G.L. c. 269, § 10E.

It is noted that the juvenile justice statutes were amended in 1996, with the effective date July 27, 1996. Youthful offender adjudications commenced with respect to offenses committed on or after July 27, 1996.

487.02 General Policy

It is the policy of the Department of Correction to collect DNA samples from all inmates in Department custody who are subject to the provisions of M.G.L. c. 22E. The submission of such DNA sample shall not be stayed pending a sentence appeal, motion of new trial, appeal to an appellate court or other posts conviction motion or petition.

487.03 Identification of Inmates Requiring DNA Sample Collection

1. Overview

- a. At reception facilities or facilities receiving Inter-Departmental transfers (e.g., a transfer from a county, federal, and a state facility other than Massachusetts) the determination whether an inmate is required to provide a DNA sample shall be conducted by Criminal Records Processing Unit (CRPU) staff pursuant to 103 DOC 417, Criminal Records Processing policy. This determination is made pursuant to M.G.L. c. 22E, § 3.
- b. Identification of inmates who require DNA sample collection pursuant to M.G.L. c. 22E requires three steps:
 - (1) Determination whether the inmate has a current or past conviction or an adjudication as a youthful offender for an offense included within M.G.L. c. 22E, § 3; i.e., an offense punishable by imprisonment in the state prison. If so, proceed to step (2).
 - (2) Determination whether the inmate is "incarcerated." If so, proceed to step (3).
 - (3) Determine whether the inmate has previously provided a DNA sample to the State Police DNA database pursuant to M.G.L. c. 22E, § 3. If the inmate has not previously provided a DNA sample, identify the inmate as requiring a DNA sample.

2. Step (1): Determination of Conviction for an Included Offense

- a. G.L. c. 22E, § 3, as amended by St. 2003, c. 107, provides in pertinent part that "any person who is convicted of an offense that is punishable by imprisonment in the state prison and any person adjudicated a youthful offender by reason of an offense that would be punishable by imprisonment in the state prison if committed by an adult, shall ... submit a DNA sample..."
- b. The offense is an included offense for the purpose of DNA sample collection if the statute that establishes the offense provides for the potential punishment of imprisonment in the state prison. So long as the statute provides for the potential punishment of imprisonment in the state prison, an inmate who is convicted of such offense need not have been sentenced to imprisonment in the state prison.
- c. Adult Adjudication

For the purpose of this policy, the term "conviction" is defined as an adjudication of guilt by a Massachusetts court. The inmate need not be sentenced, so long as guilt has been determined.

The term "conviction" shall include:

- A current conviction;
- A former conviction;
- An adjudication as a "sexually dangerous person" pursuant to M.G.L. c. 123A;
- Any disposition identified as a conviction in Attachment I.

The term "conviction" shall not include:

- A conviction in any court other than a Massachusetts state court;
- Any disposition referenced in Attachment I that is not identified as a conviction;
- Civil commitments, including but not limited to, civil commitments to MASAC or MCI-Framingham pursuant to M.G.L. c. 123, § 35.

d. Juvenile Adjudication

For the purpose of this policy, a DNA sample is required for a person who has been adjudicated as a youthful offender who committed an offense that was punishable by imprisonment in the state prison if committed by an adult.

Youthful Offender - Pursuant to M.G.L. c. 119, § 52, a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and seventeen, an offense against a law of the Commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine.

e. Civil Commitment

For the purpose of this policy, civil commitments, including but not limited to, civil commitments pursuant to M.G.L. c. 123, are not convictions.

- f. The Inmate Management System ("IMS") includes offenses that provide for the potential punishment of imprisonment in the state prison. These offenses default to the IMS DNA Information screen as offenses that require DNA sampling.

- g. Cases shall be reviewed as follows:

- i. Review the inmate's current status. If the inmate has a current sentence for an included offense listed on the IMS DNA Information screen, no further review is required.
- ii. If the inmate is not currently serving a sentence for an included offense, review prior convictions recorded in IMS listed on

the IMS DNA Information screen. If IMS lists a prior conviction for an included offense, no further review is required.

iii. If IMS does not list a prior conviction for an included offense listed on the IMS DNA Information screen, review prior convictions recorded in CJIS or other legal documentation.

h. For all inmates reviewed, document whether or not the inmate requires DNA sampling and any other pertinent information on the IMS DNA Information screen.

3. Step (2): Determination of Incarceration

For the purpose of this policy, the term "incarceration" is defined as the confinement of an individual at any prison, house of correction or Department of Youth Services facility as of February 10, 2004.

The term "incarceration" shall not include:

- Pretrial detention, including pretrial detention pursuant to M.G.L. c. 276, § 52A;
- Placement at the Treatment Center pursuant to M.G.L. c. 123A, §§ 12 or 13, unless the inmate is also serving an outstanding criminal sentence;
- Civil commitment to Bridgewater State Hospital, unless the inmate is serving an outstanding criminal sentence at the time of admission;
- Civil commitments to MASAC or MCI-Framingham pursuant to M.G.L. c. 123, § 35.

4. Step (3): Determination of Prior Collection

The DNA Liaison shall run the IMS DNA Report to identify inmates who require DNA sampling, but who have not yet had samples collected.

487.04 DNA Sample Collection Determination

As set forth below, identified staff shall determine whether a DNA sample must be collected upon the following events: Admission; Subsequent Classification; Prior to Inmate's Transfer; Prior to Release; and

Emergencies.

1. Admission

When a sample is required and has not previously been collected, a sample shall be obtained during the reception process. A notation documenting the collection of the sample shall be entered into the IMS DNA Information screen within one business day of collection.

2. Classification and Transfer

Upon each subsequent classification, the assigned Correctional Program Officer shall review the IMS Legal Issues or the DNA Information screen to ensure that a DNA sample has been collected if required. At partial IMS sites, the assigned Correctional Program Officer shall ascertain from the DNA Liaison whether the inmate requires DNA sample collection and note on the classification report one of the following:

DNA sample required, secured; or
DNA sample required, not secured, _____; or
(Explain)
DNA sample not required as of _____.
(Date)

Particular attention shall be paid to outstanding legal issues. Outstanding legal issues shall be monitored until resolved. When the legal issue(s) is/are resolved, the assigned CRPU staff shall re-evaluate the inmate's criminal history to determine whether a DNA sample must be collected. If a sample is required, this shall be documented in the IMS DNA Information screen.

Prior to any transfer, the Transfer Coordinator shall conduct a final review to ensure that a DNA sample has been collected where required. Under no circumstances shall an inmate who is required to provide a DNA sample pursuant to M.G.L. c. 22E, § 3, be transferred to lower custody, laterally, or to higher custody, or to a county, out of state or federal facility, until the sample has been properly collected.

3. Release

- a. Consistent with the Inmate Release Policy, 103 DOC 404, at full IMS sites, the DNA Liaison shall review IMS notifications for upcoming releases and complete the IMS Notifications screen. Prior to release, the Release Coordinator shall review the Preparations and Notifications and Release Clearance screens to ensure that DNA has been collected if required.
- b. At partial IMS sites, when preparing the Release Clearance Form (Attachment I to 103 DOC 404) at the time of discharge preparation, the release coordinator shall review the IMS DNA Information screen to verify that DNA has been collected if required.
- c. At all sites, in the event that a DNA sample has not been previously obtained, the release coordinator shall immediately notify the DNA Liaison. The DNA sampling must be obtained prior to the inmate's release from Department of Correction custody. Sampling shall be scheduled for two weeks prior to the actual release date. In the event the inmate refuses, this time frame will allow for a planned response. A notation documenting the collection of the sample shall be entered in the IMS DNA Information screen.

4. Emergency Draw

- a. The DNA Liaison shall notify the Central DNA Coordinator if an emergency draw is required. An emergency draw may be required in situations, including, but not limited to, the issuance of a judicial order for the immediate release of an inmate, pursuant to a writ of habeas corpus or a motion to revise or revoke the sentence. At MCI-Framingham, an emergency draw may be necessitated by the admission of an inmate to serve an extremely short or "weekend" sentence. If an emergency draw is needed during non-business hours, the shift commander shall notify the Central DNA Coordinator via the duty station. The Central DNA Coordinator shall contact the State Police Crime Laboratory to arrange for the

emergency draw and apprise the shift commander of such arrangements. The Superintendent of MCI-Framingham shall ensure that DNA Coordinators are on-site to conduct emergency draws.

- b. The Commissioner may authorize an emergency DNA sample collection, as may be required from time to time. The Central DNA Coordinator shall contact the State Police Crime Laboratory to arrange for the emergency draw.

5. County, Out-of-State, Federal and International Custody

- a. The County, Federal and Interstate ("CFI") Manager shall obtain from Technology Services all Department of Correction inmates who are in county, interstate or Federal custody on the effective date of this policy, but who have not previously provided DNA samples required by M.G.L. c. 22E, § 3. The records manager at committing sites shall provide the Central DNA Coordinator with a list of all Department of Correction inmates who are serving concurrent Massachusetts sentences in other jurisdictions.
- b. The CFI Manager shall provide a DNA contact person designated by each County with the names of all Department of Correction inmates in the County's custody who have not provided DNA samples required by M.G.L. c. 22E, § 3. The Commissioner of Correction shall request that the Sheriff coordinate DNA collection with the Massachusetts State Police vendor within one year of the effective date of this policy. The CFI Manager shall monitor the process to ensure that DNA is collected from said inmates. In the event that it appears that a DNA sample will not be collected from a Department of Correction inmate in county custody within one year of the effective date of this policy, the CFI Manager shall coordinate the inmate's transportation to a Department of Correction facility for DNA sample collection within one year of the effective date of this policy.

- c. The CFI Manager shall ensure that each Department of Correction inmate in Interstate or Federal custody who requires DNA sampling is transported to a Department of Correction facility for DNA sample collection within one year of the effective date of this policy, or in the alternative, for the on-site collection by a team described by § 487.02.
- d. The records manager at committing sites shall provide a letter of notification (Attachment II) by certified mail to each Department of Correction inmate serving a concurrent Massachusetts sentence in another jurisdiction who requires DNA sampling, advising each inmate of his or her obligation to provide a DNA sample pursuant to M.G.L. c. 22E, § 4. The Central DNA Coordinator shall provide the Director of the State Police Crime Laboratory with a list of all Department of Correction prisoners who are in international custody as of the effective date of this policy.

6. IMS DNA Audit Report

On a weekly basis, the Central DNA Coordinator shall convey an IMS DNA Audit Report to the Massachusetts State Police Crime Laboratory.

487.05 DNA Sample Collection Procedures

- 1. At committing facilities, weekly DNA sampling shall be scheduled for newly admitted inmates. At all other sites, DNA sampling shall be scheduled as necessary, upon approval of the Central DNA Coordinator.
- 2. A DNA collection team shall assemble, consisting of:
 - ? Two DNA Coordinators designated by the superintendent to take fingerprints and maintain the integrity of sample while preventing contamination; and
 - ? A qualified person designated by the Massachusetts State Police to collect the DNA blood sample.

NOTE: Only a physician, registered professional nurse, licensed practical nurse, phlebotomist,

health care worker with phlebotomist training or a person licensed and trained by the Director of the State Police or designee shall collect DNA samples pursuant to M.G.L. 22E, § 3.

3. A DNA Coordinator shall copy the inmate notification letters and staple together copies of the Spanish and English versions.
4. A DNA Coordinator shall check the DNA kit inventory to ensure sufficient supply. Additional supplies are available at the Bridgewater Complex.
5. A DNA Coordinator shall gather the DNA kits, additional medical supplies, completed photocopy forms, fingerprint pads, sharps container, bio-hazardous disposal container and an envelope sponge.
6. A DNA Coordinator shall call the inmate(s) to sampling area, verify the Department of Correction identification of the inmate, and provide the inmate with a copy of the memo from the Commissioner of Correction explaining the DNA statute (Attachment III), and the DNA Assessment Memo (Attachments IVA and IVB)
7. In the presence of the inmate, a DNA Coordinator shall open the DNA kit and remove all components from kit envelope.
8. A DNA Coordinator shall verify the kit number on the DNA Database Information Card, DNA Database Collection Card, Brown Manila Envelope and White Envelope. If all four numbers do not match, the kit shall be "wasted". **DO NOT USE THE KIT** if the kit envelope integrity seal is broken.
9. If the kit is "wasted," a DNA Coordinator shall enter the kit number in the IMS DNA Information screen and check the "wasted" box.
10. A DNA Coordinator shall read the entire Instruction Sheet enclosed in the kit.
11. A DNA Coordinator shall utilize IMS to complete the form in the kit and verify the information with the inmate. In the event that the inmate's self-reported

information differs from the information obtained from IMS, the DNA Coordinator shall immediately notify the Deputy Superintendent for Classification and Treatment, who shall ensure that the IMS information is updated as indicated. The DNA Coordinator shall complete each field of data. The middle name shall be included. Although all information can be gathered from the IMS, the inmate may self-report "Race". A DNA Coordinator shall fill out all information requested on the DNA Database Collection Card.

12. Following normal fingerprint procedures, a corrections staff person shall roll the inmate's right thumb where indicated on the Information Card and the Collection Card.

NOTE: If the inmate is missing the right thumb, use the left thumb for the print, and note the exception on the card.

If the inmate is also missing the left thumb, use the right index finger, and note the exception on the card.

If the inmate is also missing the right index finger, use the left index finger and so on, and note the exception on the card.

NOTE: If the back of the Information Card or the Collection Card needs to be used, sign the back of the card.

13. The corrections staff person shall legibly sign the Fingerprint Card on the line provided.
14. A qualified person designated by the Massachusetts State Police shall collect the blood sample as follows:
 - a. Put on bio-hazard barrier gloves (not provided in kit)
 - b. Wipe the tip of inmate's left or right ring (or other) finger with the alcohol prep pad provided.
 - c. Using the sterile, fixed depth lancet provided, (or other appropriate lancet) prick the inmate's finger.
 - d. While holding the inmate's finger over one of the four circles printed on the FTA Blood Collection

Paper, milk the inmate's finger allowing two drops of blood to fall on the card, within the circle.

- e. Repeat the above procedure (Step 14(d)) using the three remaining circles.
- f. Using the sterile gauze pad provided, wipe off any remaining blood from the inmate's finger, then affix the adhesive bandage to the inmate's finger.
- g. Discard used lancet, alcohol prep pad, gauze pad and barrier gloves consistent with exposure of concern protocol. **Do not** place used components in the kit envelope.

NOTE: To avoid contamination, it is critical not to touch the FTA Blood Collection Paper or allow the paper to come into contact with another FTA Blood Collection Paper during the drying and packaging process.

- 15. A DNA Coordinator shall allow the blood on the card to **AIR DRY** for approximately 30 minutes. After 30 minutes, place the Database Collection Card sideways in the self-sealing plastic specimen bag provided, then seal bag.
DO NOT remove the moisture absorbing packet from the specimen bag.
- 16. A DNA Coordinator shall place the plastic specimen bag (containing the blood card) in white kit envelope, moisten the white kit envelope flap and seal envelope. (**NOTE:** In order to avoid contamination of the sample, the envelope flap shall be moistened with a sponge. Under no circumstances shall the DNA Coordinator use his or her tongue to moisten the envelope flap.) The DNA Coordinator shall affix the security seal where indicated on the envelope, then initial the seal and date.
- 17. A DNA Coordinator shall place the sealed white kit envelope and the DNA Database Information Card in the manila kit shipping envelope, then seal the manila envelope and affix the shipping seal where indicated. (**NOTE:** In order to avoid contamination of the sample, the envelope flap shall be moistened with a sponge.

Under no circumstances shall the DNA Coordinator use his or her tongue to moisten the envelope flap.)

NOTE: A DNA Coordinator shall perform a quality control check before sealing envelope by matching all of the numbers, signing in appropriate areas and sealing with appropriate seals.

18. As directed, a DNA Coordinator shall mail the sealed kit to the Massachusetts State Police Crime Laboratory within one business day. Within one business day, a DNA Coordinator shall make an entry in the IMS DNA Information screen to record the sample, completely filling in each data field.

487.06 Inventory and Control of DNA Kits

1. The Central Purchasing Coordinator, who is located at the Central Warehouse in Bridgewater, shall be responsible for ordering, maintaining and distributing DNA sample kits and for tracking the kit numbers.
2. At each facility, the DNA Liaison shall be responsible for obtaining a sufficient number of kits from the Central Purchasing Coordinator, maintaining the safe and secure storage of the kits, and tracking the kit numbers.

487.07 Refusal to Comply with DNA Sample Collection

1. M.G.L. c. 22E, § 11 provides:

Any person who is required to provide a DNA sample pursuant to this chapter and who refuses to provide such DNA sample shall be subject to punishment by a fine of not more than \$1,000 or imprisonment in a jail or house of correction for not more than six months or both.

2. In the event that an inmate, other than an inmate civilly committed to Bridgewater State Hospital, refuses to provide a DNA sample upon request, the inmate shall be placed on awaiting action status and the Deputy Superintendent for Classification and Treatment shall be notified. The Deputy Superintendent shall designate correctional personnel to seek the inmate's compliance by explaining the requirements of

the statute to the inmate as well as the Department of Correction's intent to refer any and all refusals for prosecution. Should the inmate continue to refuse, the Superintendent shall contact the Commissioner to consider employing reasonable force to assist in the DNA sample collection as authorized by M.G.L. chapter 22E, § 4(a). Under no circumstances shall spontaneous force be utilized to obtain a DNA sample. In the event of a refusal by an inmate who is civilly committed to Bridgewater State Hospital, the Superintendent shall be notified. The Superintendent shall contact the Central DNA Coordinator to determine appropriate resolution.

3. An inmate's refusal to provide a DNA sample upon request shall be documented in a disciplinary report and a departmental incident report. Offenses shall include, but not be limited to, disobeying an order, violating any departmental rule and violating any law of the Commonwealth of Massachusetts.

487.08 Cost Assessment

1. G.L. c. 22E, § 4(b) provides:

The cost of preparing, collecting and processing a DNA sample shall be assessed against the person required to submit a DNA sample, unless such person is indigent as defined in section 27A of chapter 261. The cost of preparing, collecting and processing a DNA sample shall be determined by the secretary for administration and finance in consultation with the director and shall be paid to the department and retained by it to offset costs associated with creating, maintaining and administering the state DNA database.

2. The cost of preparing, collecting and processing a DNA sample from an inmate shall not be collected unless the inmate voluntarily signs a DNA Reimbursement Consent Form (Attachment to 103 DOC 487 - DNA Sample Collection Attachments IV(A) and IV(B) to signify his/her consent for the institutional treasurer to withdraw funds from the inmate's accounts.

3. An inmate's refusal to sign a DNA Reimbursement Consent Form shall not affect the actual collection of the sample.

487.09 Conviction Reversal

1. The reversal of a conviction for a DNA offense or the revision of the conviction to a non-DNA offense subsequent to the collection of a DNA sample is governed by M.G.L. c. 22E, § 15, which provides:

Any person whose DNA record has been included in the state DNA database may apply to the superior court to have such record expunged on the grounds that the conviction or judicial determination that resulted in the inclusion of the person's DNA record in the state DNA database has been reversed and the case dismissed; provided, however, that one year shall have elapsed from the date the judgment reversing or dismissing the conviction became final or such person shall have obtained, in writing, authorization from the district attorney that no further prosecution is contemplated under the original offense for which such person was convicted or for which the original judicial determination was entered.

2. Upon receipt of information that an inmate's conviction for a DNA offense has been reversed, and subject to a subsequent CJIS review by CRPU staff to confirm that the inmate no longer meets the requirements set forth in section 487.03, the Superintendent shall notify the Director of the State Police Crime Laboratory in writing, with copies to the Commissioner and the inmate.
3. Upon receipt of notification from the State Police that an inmate's DNA is no longer to be maintained in the State Police DNA database, the Central DNA Coordinator shall notify the facility's DNA Liaison, who shall amend the IMS DNA Information screens. If the inmate is no longer in custody, the Central DNA Coordinator shall update the IMS DNA Information screen.

487.10 Erroneous DNA Samples

1. Staff shall make all reasonable efforts to avoid DNA sampling errors. However, a DNA sampling error could occur under circumstances including:
 - a. DNA sample collection from an inmate who is not subject to DNA sampling under M.G.L. c. 22E, § 3;
 - b. DNA sample collection from an inmate who has already provided a DNA sample pursuant to M.G.L. c. 22E, § 3;
 - c. Improper DNA sample identification.
2. The Superintendent shall be notified upon the discovery that a DNA sampling error has occurred, and an incident report shall be submitted. The Superintendent shall notify the Director of the State Police Crime Laboratory in writing, with copies to the Commissioner and the inmate.
3. Upon receipt of a response from the Director of the State Police Crime Laboratory, the Central DNA Coordinator shall ensure that the IMS DNA Information screen is modified appropriately.

487.11 Other DNA Sample Collection

1. Court Orders
 - a. Court orders for DNA sampling by outside agencies (e.g., District Attorney) shall be referred to the Superintendent. The Superintendent shall make arrangements to facilitate on-site collection of the sample by such persons designated by the Court order and notify the Central DNA Coordinator.
 - b. Court orders requiring the Department to transport an inmate to an outside location (e.g., police laboratory) shall be referred to the Superintendent, who shall make arrangements for the transportation of the inmate and notify the Central DNA Coordinator.
 - c. Court orders requiring a DNA sample to be collected directly by the Department of Correction personnel shall be referred immediately to the Central DNA Coordinator.

2. Paternity Determinations

The Department of Social Services ("DSS") collects DNA samples to assist paternity determinations. Requests for DNA sampling from the Department of Social Services shall be referred to the Superintendent. The Superintendent shall make arrangements to facilitate on-site collection of the sample by such persons designated by the Department of Social Services.

3. Requests by Other Jurisdictions

Requests for DNA samples received from other jurisdictions shall be referred to the Central DNA Coordinator.

4. Documentation

DNA sampling conducted pursuant to court orders, paternity determinations, or any other purpose, other than sampling conducted pursuant to M.G.L. c. 22E, shall **not** be documented in the IMS DNA Information screen.

487.12 DNA Inquiries

DNA database information shall be deemed Criminal Offender Record Information ("CORI"). Response to inquiries regarding DNA sample collection from individual prisoners shall be subject to the standards set forth in 103 DOC 153. Staff shall also refer persons making such inquiries to the State Police Crime Laboratory, as the official keeper of DNA database records. All other inquiries regarding DNA collection shall be referred to the Central DNA Coordinator.

487.13 Audits

The Central DNA Coordinator shall be responsible for conducting periodic audits of the DNA collection process and records.

ATTACHMENT I: DISPOSITIONS

CJIS Code	Disposition	Conviction
APP	Appealed. Defendant is convicted.	Yes
APP WD	Appeal withdrawn. Defendant is convicted.	Yes
BO	Bound Over. Not convicted yet.	No
C	Continued (date). A case may be continued for various reasons. It could be continued for a status date with the expectation that the case will be dismissed altogether or dismissed after the entry of an indictment.	No
CC	Court costs. Imposition of costs probably means that guilt has been determined.	Call court
CMTD	Committed. Guilty.	Yes
CMNTY SERV	Community service is an intermediate sanction. However, it is possible for the court to dismiss the charges after completion of community service.	Call court
CWOF	Continued without a finding. Either the judge finds, or the defendant admits, to sufficient facts to warrant a guilty finding, but the court will refrain from doing so. The case is continued without a finding (either with or without the Probation Department's supervision). Upon successful completion of the term of the continuance (no subsequent arrests, compliance with any special terms and conditions), the case is dismissed. If the defendant fails to complete the terms of the continuance, a guilty finding may be entered and a sentence imposed.	No
DISM	Dismissed. Not convicted.	No
DISM R/PROB	Dismissed remanded probable cause. Remanded to superior court after finding of probable cause in district court. District court compliant is dismissed. Should see same charge appearing in superior court.	No
DRC	Dismissed Request Commonwealth. Not convicted.	No
FILE	Filed. Under G.L. c. 218, § 38, a district court judge may file any case other than a complaint for the commission of a felony issued against a person who appears previously to have been convicted of a felony or previously to have had a complaint for felony placed on file. A case may be filed without a finding, or without a change of plea. In this case, the adjudication is suspended with a not-guilty plea still intact. The case may be brought forward at a future date without the issuance of a new complaint. In contrast, if the disposition is guilty-filed ("G-Filed"), then after either a guilty plea or a guilty verdict, the case was filed after a conviction. Therefore, the notation "FILED" alone does not indicate whether the case was filed before adjudication of guilt.	Call court
FINE	Fine plus dollar amount. Inmate is convicted.	Yes
FJ	First instance jury. Old de novo trial system in district court.	No
G	Guilty. Defendant is convicted.	Yes

**ATTACHMENT II: NOTIFICATION LETTER TO OUT-OF-STATE INMATES
SERVING CONCURRENT MASSACHUSETTS SENTENCES**

Date

Certified Mail, Return Receipt Requested

Name of Inmate

Address of Inmate

RE: Obligation to Provide DNA Sample

Dear [Name of Inmate]:

On November 12, 2003, Governor Mitt Romney signed into law "An Act Relative to State DNA Database," which amends the DNA statute, M.G.L. c. 22E. This amendment increases the number of offenses requiring DNA sample collection, requiring the Commonwealth to collect DNA samples from any person who has been convicted of any offense that is punishable by imprisonment in the state prison, and from any person who is adjudicated a youthful offender by reason of an offense that would be punishable by imprisonment in the state prison if committed by an adult. The effective date of the amendment to the DNA statute is February 10, 2004.

According to Department of Correction records, you have been convicted of an offense that subjects you to the requirements of M.G.L. c. 22E. Therefore, please be advised of your obligation to provide a DNA blood sample to the Massachusetts State Police, as required by M.G.L. c. 22E.

Very truly yours,

Director of Inmate Records
MCI-Concord

cc: Director
State Police Crime Laboratory
59 Horse Pond Road
Sudbury, Massachusetts 01754

ATTACHMENT III: NOTIFICATION LETTER

M E M O R A N D U M

TO: All Inmates

FROM: Kathleen M. Dennehy, Acting Commissioner

DATE: February 10, 2004

RE: **DNA Sampling**

On November 12, 2003, Governor Mitt Romney signed into law "An Act Relative to State DNA Database," which amends the DNA statute, M.G.L. c. 22E. This amendment increases the number of offenses requiring DNA sample collection, requiring the Commonwealth to collect DNA samples from any person who has been convicted of any offense that is punishable by imprisonment in the state prison, and from any person who is adjudicated a youthful offender by reason of an offense that would be punishable by imprisonment in the state prison if committed by an adult.

The effective date of the amendment to the DNA statute is February 10, 2004. Commencing on the effective date, the Department of Correction, with the assistance of the State Police and its contract medical provider, will collect DNA blood samples from all inmates subject to the amended statute, who have not previously provided DNA blood samples.

DNA collection consists of a simple, "pin prick" blood sample, as well as a simultaneous fingerprinting of all affected inmates. All inmates required to provide a blood sample and fingerprints will be told the time, date and location to report for sampling. The Department of

Correction is authorized by M.G.L. c. 22E, § 4 to employ reasonable force to assist in collecting DNA blood samples in cases where an individual refuses to submit to such collection. The failure to provide a DNA blood sample can subject the person to punishment by a fine of up to \$1,000 or incarceration in a jail or house of correction for up to six months, or both. See M.G.L. c. 22E, § 11. In addition, an inmate may be subject to a disciplinary report for failure to comply and may be returned to higher custody or denied a move from his or her current security level.

The DNA testing statute also states that the person whose DNA is sampled is responsible for all costs associated with preparing, collecting and processing the DNA sample, unless the person is indigent for these testing purposes. Copies of the amended DNA collection statute, as well as the Department of Correction DNA Sample Collection policy, 103 DOC 487, are available in the inmate law libraries for review.

Thank you for your anticipated cooperation in this matter.

EL MEMORÁNDUM

A: Todos Presos

DE: Kathleen M. Dennehy, Actuando a Miembro de una comisión

La FECHA: el 10 de febrero de 2004

ASUNTO: la Muestra del DNA

En el 12 de noviembre de 2003, el signo del Mitón de Gobernador Romney en la ley “Un Actúa la Base de datos Relativa del DNA del Estado,” cuál enmendación el estatuto del DNA, M. G. L. C. 22E. Estes aumentos de la enmienda el número de las ofensas que requieren la colección de la muestra del DNA, requiriendo la República reúne las muestras del DNA de cualquier persona quién presidiario de cualquier ofensa que es punible por el encarcelamiento en la prisión del estado, y de cualquier persona quién es adjudicado un ofensor juvenil por razona de una ofensa que sería punible por el encarcelamiento en la prisión del estado si cometió por un adulto.

La fecha de vigencia de la enmienda al estatuto del DNA es el 10 de febrero de 2004. Comenzando en la fecha de vigencia, el Departamento de la Corrección, con la ayuda de la Policía del Estado y su contrato proveedor médico, reunirá las muestras de sangre de DNA de todos presos sujetos al enmendó el estatuto, quién no ha proporcionado previamente DNA las muestras de sangre.

La colección del DNA consiste en un sencillo, “alfiler pincha” la muestra de sangre, así como una huella dactilar simultánea de todos presos del afecto. Todos presos requirieron proporciona una muestra de sangre y huellas dactilares serán dichas el tiempo, la fecha y la ubicación informan para la muestra. El Departamento de la Corrección es autorizado por M. G. L. C. 22E,. El fracaso proporciona un sujeto de la muestra de sangre de DNA la persona al castigo por una multa de hasta \$1,000 o la encarcelación en una cárcel o la casa de la corrección hasta seis meses, o los dos. Vea M. G. L. C. 22E,. Además, un preso puede ser susceptible a un disciplinario informa para el fracaso obedece y puede ser vuelto a la custodia más alta o negado que un mueve de su nivel de seguridad actual.

El DNA que prueba el estatuto también estados que la persona cuyo muestra de DNA es responsable de todo socio de costos con preparar, reuniendo y el proceso la muestra del DNA, a menos que la persona siendo indigente para estos probando propósitos. Las copias del enmendó el estatuto de la colección del DNA, así como el Departamento de la política de la Colección de la Muestra del DNA de la Corrección, 103 DOC 487, están disponible en las bibliotecas de la ley de preso para revisa.

Gracias para su anticipó la cooperación en este asunto.

Memorandum

TO: All Inmates

FROM: Kathleen M. Dennehy, Commissioner

DATE: February 5, 2004

RE: DNA Assessments

This is to inform you that on March 25, 2001, Judge Diane M. Kottmyer issued Findings of Fact, Conclusions of Law and Order for Judgement in the Middlesex Superior Court case, Welsh v. Department of Correction & Department of State Police, Civil Action No. 00-4998-F. This litigation challenged the manner in which the Department of Correction ("DOC") assessed and collected funds from inmates for DNA sampling. The Court has enjoined DOC from deducting DNA costs from wages earned by inmates or from inmate's accounts without the consent of the inmates. The Court has also enjoined DOC from freezing inmates' accounts for any reason associated with the assessment of costs of collecting and processing DNA samples in the absence of a court order or legislation expressly authorizing the seizure of such funds. Judge Kottmyer's order takes effect on **Friday, April 6, 2001**. The actual collection of DNA blood samples is not affected by the Judge Kottmyer's decision.

Please be advised that the \$110 DNA assessment shall no longer be collected, except if an inmate signs the consent form to signify his/her consent for the DOC to withdraw funds from the inmate's account. I have directed the Director of Administrative Services to commence the process necessary to "unfreeze" inmate accounts that were frozen for the purpose of the DNA assessment and to refund any funds taken, along with applicable interest. It is estimated that all accounts will be "unfrozen" and the refunds completed within thirty (30) to sixty (60) days.

Thank you in your anticipated cooperation in this matter.

MEMORANDUM

A: Todos los Presos

De: Kathleen M. Dennehy, Comisionado

Fecha: 5 de Febrero del 2004

Ref: DNA Evaluaciones

La presente es para informarle a usted que el 25 de Marzo del 2001, la Jueza Diane M. Kottmyer emitio una Busqueda de Hechos, Conclusiones de Ley y Orden de Juicio en un caso de la Corte Superior de Middlesex, Welsh versus El Departamento de Correccion y el Departamento de la Policia del Estado, Accion Civil No. 00-4998-F. Esta litigacion desafio la manera en que el Departamento de Correccion (DOC) determino y tomo los fondos de los presos por las muestras de DNA. La Corte ha prohibido al DOC de deducir los costos de DNA de los sueldos ganados por los presos o de las cuentas de los presos sin el consentimiento de de los presos. La Corte tambien ha prohibido al DOC de congelar las cuentas de los presos por cualquier razon asociada con la evaluacion de costos de obtener y procesar muestras de DNA en ausencia de una orden de la corte o de legislacion autorizando expresamente la toma de esos fondos. La orden de la Jueza Kottmyer toma efecto el **Viernes 6 de Abril del 2001.** La toma actual de DNA de muestras de sangre no esta afectada por la decision de la orden de la Jueza Kottmyer.

Por favor tenga en cuenta que los \$110 dolares por la evaluacion de DNA no sera tomado, excepto en el caso en que un preso/a firme la papeleta de consentimiento para indicar su consenso para que el DOC retire fondos de las cuentas del preso/a. Yo he dirigido al Director de Servicios Administrativos de comenzar el proceso necesariopar “descongelar” las cuentas de los presos que fueron congeladas con el proposito de la evaluacion de DNA y de devolver cualquier monto tomado con el interes aplicable. Se estima que todas las cuentas seran “descongeladas” y los montos devueltos dentro de treinta (30) a sesenta (60) dias.

Gracias por su anticipada cooperacion en este asunto.

DNA REIMBURSEMENT CONSENT FORM

A. I, _____, hereby consent to the withdrawal of \$_____ from my personal account and \$_____ from my savings account by the Institutional Treasurer as reimbursement for DNA testing as required by M.G.L. c. 22E, § 4 (b). I further acknowledge that I have read this form and understand it fully, and that my consent to the above-indicated withdrawal(s) is given voluntarily and without duress.

Date:_____

Inmate Signature

B. I, _____, acknowledge that I have read this form and refuse to consent to any withdrawal of funds for DNA testing as required by M.G.L. c. 22E § 4 (b).

Date:_____

Inmate Signature

C. Inmate _____ was presented with this consent form and on this date refused to sign under either paragraph A or B.

Date:_____

Staff Name (please print)

Staff Signature

Job Title

Inmate Commitment Number _____

Date Sample Taken _____